

**CITY COUNCIL APPEAL SUMMARY OF  
BUILDING AND FIRE CODE BOARD  
SUSPENSION OF CERTIFICATE OF OCCUPANCY  
APPEAL DENIAL**

**BOARD DATE:** May 29, 2019

**CITY COUNCIL APPEAL:** October 3, 2019

**PROJECT NAME:** Casa de Luz, 1701 Toomey Rd **DISTRICT:** 5

**ADDRESS OF APPLICATION:** 1701 Toomey Rd Austin, TX 78704

**AGENT:** Stuart Hersh

**SUMMARY OF CASE:**

The appellant requests the City Council grants its appeal and reverse the Building Official's May 2, 2019 suspension of the certificate of occupancy for the dining facility located at 1701 Toomey Road.

On or before 2003 a covered entrance gate was constructed on site without a permit which blocked the fire apparatus access road to the cafeteria. Thereby rendering the cafeteria out of compliance with City Code and increasing the hazard of the building. By 2009 the fire lane had been vegetated. The requirement for the fire apparatus access road, or fire sprinklers as an alternative, was in place in 1991 under the 1988 Uniform Building Code and Uniform Fire Code when the facility obtained permits to change the use from a Meat Processing Plant and Warehouse to a Private Education Facility with Cafeteria.

Pursuant to City Code Section 25-1-413 (Suspension of a Certificate of Occupancy), the Certificate of Occupancy for the cafeteria located at 1701 Toomey Road was suspended on May 2, 2019 due to the structure not complying with the requirements of the Fire Code 503.1.1 Building and Facilities and 503.2.1 Dimensions, which require a fire apparatus access road within 150 feet of all portions of the facility or fire sprinklers as an alternative.

The Building and Fire Code Board of Appeals took no action on May 29, 2019 in regard to the appeal of the Suspension of the Certificate of Occupancy for the Casa de Luz dining facility located at 1701 Toomey Road. The suspension remains in effect during the pendency of the appeal to City Council.

**LAND DEVELOPMENT CODE:**

**§ 25-1-413 – Suspension of a Certificate of Occupancy**

(A) The building official may suspend a certificate of occupancy if the building official determines that:

- (1) the certificate of occupancy was issued in error; or
- (2) the structure does not comply with the requirements of the City Code.

(B) A suspension is effective until the building official determines that the person using the building has complied with the requirements of the City Code.

## **DEPARTMENT COMMENTS:**

The commercial structures on the property were originally permitted as a Meat Processing Plant and Warehouse in the 1960's. In 1991, the use was converted to a Private Education Facility with a Cafeteria. The 1988 Uniform Building Code and Uniform Fire Code applied in 1991. These codes required buildings to come in to compliance with the currently adopted codes when the use was changed. This means that when the use was changed, the area was required to provide a fire apparatus access road within 150 feet of each structure. Alternatively, fire sprinklers could be provided. The property received a variance to locate a primary education facility on a paved street having a width of less than 40 feet.

Following a fire in the cafeteria in 1996, that building was renovated in 1997. City staff issued an Occupant Load card for a Restaurant and Cooking School in February 1997. The permit for the renovation was finalized in June 1997 and a Certificate of Occupancy was issued for a School Cafeteria.<sup>1</sup>

### Recent Permit-Related Activities:

In February 2018 the Building Official issued a Notice of Intent to Suspend the Certificate of Occupancy for the Cafeteria due to the structure not complying with the requirements of the Fire Code for lack of a fire apparatus access road or the alternative fire sprinklers. In March 2018, the Building Official waived the requirement for an approved Site Plan to allow the fire sprinklers to be installed under a Site Plan Exemption with the condition that a current and accurate site plan layout be submitted. The purpose for allowing a site plan exemption was to encourage a quick resolution to the safety hazard. The site plan layout was received by the Development Services Department in April 2019.

The standard process is to receive an approved Site Plan Exemption, apply for and receive a Building Permit and associated trade permits, start the construction and inspection process, and submit fire sprinkler shop drawings to the Fire Department. The owner submitted applications for the Site Plan Exemption and water tap permit in July and August of 2018 with approval gained in December 2018. Permits for the exterior water line were obtained in January 2019.

The fire sprinklers were installed in October 2018 without a permit and fire sprinkler shop drawings were submitted to the Austin Fire Department shortly thereafter. Comments were issued by the Fire Department in October 2018 requiring corrections to be made and resubmitted. The owner's agent indicated in early January 2019 that they intended to file a building permit application for the interior fire sprinklers. The permit application required the owner's agent to obtain an asbestos report and a structural engineer's letter to demonstrate that the existing structure could support the additional load of the fire sprinkler piping.

The building permit application was submitted on March 25, 2019 and comments were issued by staff on April 2, 2019. The comments from the Fire Department were the same comments from October 2018 that had not been addressed. The corrections to the plans have not been submitted for review as of September 19, 2019.

### Recent Enforcement Activities:

On February 27, 2019, the Building Official issued a new Notice of Intent to Suspend the Certificate of Occupancy for the Cafeteria due to the lack of fire apparatus access with 60 days to obtain and finalize the permit for the unpermitted installed fire sprinklers. On May 2, 2019 the Certificate of Occupancy was suspended and a Notice of Intent to Revoke the Certificate of Occupancy was sent to the owner and agent with a deadline of June 1, 2019 to remedy the violation of the lack of fire apparatus access.

On May 29, 2019 the Building and Fire Code Board took no action on the appeal to reverse the suspension of the certificate of occupancy.

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<sup>1</sup> A Certificate of Occupancy permits the use and occupancy of the building. An Occupant Load Card indicates the number of persons that may occupy an assembly building or space at any one time and for which the means of egress is designed.

The corrections to the building permit application plans have not been submitted for review as of September 19, 2019. Should the unpermitted fire sprinklers be installed per the current set of plans, they do not comply with City Code.

Staff recommends denial of this appeal.